

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK T. MURRAY,
Plaintiff,

v.

KRAIG NEWMAN, *et al.*,
Defendants.

Case No. C07-5215 RBL/KLS

ORDER TO SHOW CAUSE

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Before the court for review is Plaintiff's proposed civil rights complaint in which Plaintiff names the Grays Harbor County Deputy Prosecuting Attorneys Kraig Newman and Megan Valentine as Defendants. (Dkt. # 1). Plaintiff has brought this action under 42 U.S.C. § 1983, but appears to challenge the validity of a 2005 Washington state conviction for domestic violence. The Court finds that Plaintiff must show cause why his complaint should not be dismissed for failure to state a claim under 42 U.S.C. § 1983.

I. DISCUSSION

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by a person acting under color of state law and that (2) the

1 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of
2 the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*,
3 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an
4 alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354
5 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

6 When a person confined by government is challenging the very fact or duration of his physical
7 imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or
8 a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.
9 *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). In order to recover damages for an alleged
10 unconstitutional conviction or imprisonment, or for other harm caused by actions whose
11 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the
12 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
13 invalid by a state tribunal authorized to make such determination, or called into question by a federal
14 court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477,
15 486-87 (1994). A claim for damages bearing that relationship to a conviction or sentence that has
16 not been so invalidated is not cognizable under § 1983. *Id.*

17 Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider
18 whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or
19 sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the
20 conviction or sentence has already been invalidated. *Id.* If the court concludes that the challenge
21 would necessarily imply the invalidity of the judgment or continuing confinement, then the challenge
22 must be brought as a petition for a writ of habeas corpus, not under § 1983.” *Butterfield v. Bail*,
23 120 F.3d 1023, 1024 (9th Cir.1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

24 Plaintiff must also allege facts showing how the individually named defendants caused or
25 personally participated in causing the harm alleged in his proposed Complaint. *Arnold v. IBM*, 637
26 F.2d 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on
27 the basis of his or her supervisory responsibility or position. *Monell v. New York City Dept. of Social*

1 *Services*, 436 U.S. 658, 694 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a
2 § 1983 claim. *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982). Therefore, Plaintiff should state the
3 factual basis for his allegation that Defendants maliciously prosecuted him.

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5 Accordingly, it is ORDERED:

6 1. Plaintiff shall show cause why this complaint should not be dismissed. A response is
7 due by **June 15, 2007**. If Plaintiff fails to file a response or the response shows the Plaintiff cannot
8 go forward the Court will enter a report and recommendation that the complaint be dismissed.

9 2. The Court Clerk is directed to send a copy of this Order to Plaintiff.

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11 DATED this 14th day of May, 2007.

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14 Karen L. Strombom
15 United States Magistrate Judge
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